

Personal Service Companies Important tax changes

HMRC's off-payroll working rules, sometimes known as 'IR35', were first introduced almost 20 years ago and were designed to ensure that workers providing services to a client through an intermediary, such as a personal service company, and who would have been an employee if they were contracted directly, pay broadly the same tax and National Insurance contributions (NICs) as employees.

These rules are set to change significantly from 6 April 2020 and will see responsibility for determining workers' employment status shifting from the intermediary to the end client in many circumstances. Advance preparation will therefore be key to ensuring businesses meet their new obligations.

Who will be affected?

You may be affected by the change in rules if you are:

- a worker who provides your services through your intermediary;
- a client who receives services from a worker through their intermediary; or
- an agency providing workers' services through their intermediary.

Current Rules

Under the current regime, where a worker provides services through an intermediary to a client in the public sector, it is already the responsibility of the end client to determine the worker's employment status and notify them of the decision.

If, however, the end client is in the private sector, it is the responsibility of the worker's own intermediary to decide the worker's employment status and whether the rules apply for each contract.

Where the rules apply, the worker's intermediary is required to calculate a deemed employment payment at the year end, on which tax and NICs are calculated and reported through Real Time Information (RTI) at the end of the tax year.

New Rules

From 6 April 2020, medium and large clients in the private sector (including third sector organisations) will be brought in line with public sector authorities and will be responsible for deciding whether the rules apply to a particular contract.

Clients will generally be considered medium or large, and therefore within the scope of the new rules, if two out of the following three criteria are met:

- Annual turnover of more than £10.2 million;
- Balance Sheet total (gross assets) of more than £5.1 million;
- More than 50 employees.

There are also rules for unincorporated businesses, connected companies and groups of companies.

Where the rules apply, clients will need to decide the employment status of a worker and pass its determination and the reasons for the determination to the worker or agency it is contracting with. This must be done for every contract agreed, and reasonable care must be taken when making the determination.

The party that pays the worker's intermediary in any arrangements within the scope of the new rules, (this may be the client themselves or an agency), will usually also be known as the fee-payer or deemed employer, and will be responsible for calculating and deducting employment taxes and NICs from the payment to the worker's intermediary, paying employers' NICs, applying the apprenticeship levy, and reporting to HMRC via RTI.

Workers operating through intermediaries and providing services to small private sector clients will continue under the existing regime for those contracts i.e. responsibility for determining whether the rules apply will sit with the worker's intermediary.

How to Prepare

HMRC are encouraging private sector clients affected by the changes to prepare in advance of April 2020 by following these steps:

- Look at your current workforce (including those engaged through agencies and other intermediaries) to identify those individuals who are supplying their services through personal service companies;
- Determine if the off-payroll rules apply for any contracts that will extend beyond April 2020. You can use HMRC's Check Employment Status for Tax (CEST) service to do this;
- Start talking to your contractors about whether the off-payroll rules apply to their role;
- Put processes in place to determine if the off-payroll rules apply to future engagements. These might include who in your organisation should make a determination and how payments will be made to contractors within the off-payroll rules.

If you are a worker providing services through your personal service company, you too will need to prepare for the change in rules in advance of April 2020 by:

- Looking out for status determinations provided by your private sector clients and checking these carefully. If you disagree with a determination, you will need to write to the client with your reasons for disagreeing, and the client will then have 45 days in which to respond;
- Being ready for potential fee negotiations. Under the new rules, the fee payer will now have a liability to employers' NICs, which represents an additional cost to them. Whilst they cannot lawfully deduct this from a fee that has already been agreed, they may try to renegotiate terms to reduce the rate for the job.

How Ensors can help

The off-payroll working rules are complicated and can impact a number of areas of your business. We are here to assist and provide support throughout the process, including;

- Review of current workforce and guidance through HMRC's CEST tool;
- Assistance with calculating deemed employment payments and tax and NICs thereon;
- Payroll Services for deducting, reporting and paying tax and NICs to HMRC;
- Advice on how to account for deemed employment payments, interaction with VAT and corporation tax, and personal tax implications of PAYE/NIC withheld.

If you think you may be affected by the impending change in rules to off-payroll working, either as a client engaging workers operating through personal service companies, or as a worker that provides services through their own personal service company, please speak to your usual Ensors contact or Katie Varney, Corporate Tax partner, on 01284 722300 or email katie.varney@ensors.co.uk